

1                                   **BEFORE THE PUBLIC UTILITY COMMISSION**  
2   **OF OREGON**  
3   **UM 1121**

4  
5   In the Matter of  
6   **OREGON ELECTRIC UTILITY COMPANY, LLC,**  
7   et al.,  
8   Application for Authorization to Acquire Portland  
9   General Electric Company

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12                                   **SUPPLEMENTAL DIRECT TESTIMONY**  
13   **OF**  
14   **KELVIN L. DAVIS**  
15   **ON BEHALF OF APPLICANTS**

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18  
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20                                   **May 27, 2004**

I. INTRODUCTION

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3  
4 **Q. Please state your name.**

5 A. My name is Kelvin L. Davis. I previously offered direct testimony in this proceeding.

6 **Q. What is the purpose of this testimony?**

7 A. This testimony supplements my earlier testimony. Over the last three months the  
8 Oregon Electric<sup>1</sup> team has had the opportunity to hear from stakeholders about their  
9 questions and concerns. In addition, we have had greater access to Portland General  
10 Electric Company ("PGE"), which has aided our understanding of the issues facing the  
11 company and its customers. In light of what we have learned, Oregon Electric believes  
12 it would be constructive to supplement the record to respond to some of those questions  
13 and concerns. I also will address certain commitments Oregon Electric is willing to  
14 make, and certain conditions Oregon Electric is willing to accept as part of this  
15 proceeding.

16 **Q. Please summarize your supplemental testimony.**

17 A. I will provide more specific information regarding:

- 18
- Oregon Electric's plan for the business and operation of PGE;
  - 19 • Commitments Oregon Electric is willing to make;
  - 20 • Conditions Oregon Electric is willing to accept; and
  - 21 • The net benefit of Oregon Electric's proposed acquisition, including a  
22 discussion of the appropriate basis for determining "net benefit."
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<sup>1</sup> Throughout this testimony, I will use "Oregon Electric" to refer to Oregon Electric Utility Company, LLC or to all Applicants, as the context may imply.



1 The review is a prudent first step that any new owner would undertake. We want to  
2 help make a good company an even better company.

3 Broadly stated, Oregon Electric's plan is to assist PGE in continuing to improve  
4 the operation of the company for the benefit of customers and shareholders through a  
5 combination of long-, medium-, and near-term measures. To do so, the PGE Board  
6 appointed by Oregon Electric will (a) evaluate and assess the company's current  
7 strategic plan and, if appropriate, adopt a revised plan in order to most effectively  
8 address the critical issues facing the company, and (b) initiate and oversee the  
9 assessment and implementation of performance improvements.

10 **Q. How will Oregon Electric accomplish this plan?**

11 A. The first step will be to engage in a systematic and comprehensive review of the  
12 company. This review will be used to inform the new PGE Board about PGE's current  
13 strategic plan, the critical issues facing the company, and how PGE is currently  
14 performing and projected to perform, financially and operationally. The results of the  
15 review will allow the Board to assess and consider changes to PGE's current strategic  
16 plan, to assess PGE's current organizational structure, and to identify areas where PGE  
17 may be able to further improve efficiency and productivity. Action plans will be  
18 developed to ensure that improvements are cost-effective and implemented in a timely  
19 manner.

20 **Q. Has Oregon Electric established a framework for the review process?**

21 A. Yes. We are developing an Initial Review Process Plan for PGE ("Review Process  
22 Plan") that will set out the framework for an evaluation of PGE's strategic plan,  
23 financial plan, and operating performance. The Review Process Plan will also address  
24 effective communication of the company's plan and accompanying goals to employees,  
25 customers, and other stakeholders. Finally, the Review Process Plan will include

1 measures to ensure implementation and monitoring of any commitments made by  
2 Oregon Electric in connection with the Commission's approval of this acquisition. The  
3 Review Process Plan will be implemented upon closing. A draft copy of the Review  
4 Process Plan is attached as Appendix A.

5 **Q. What will be the steps in the Review Process Plan?**

6 A. With respect to the strategic plan, a committee of the Board of Directors will work with  
7 the "transition team" discussed below to (a) review and analyze the company's current  
8 strategic plan, (b) identify, assess, and prioritize issues confronting the company,  
9 (c) integrate results of the financial and operating review discussed below, and  
10 (d) formulate and propose to the Board a revised strategic plan, as appropriate. The  
11 Board will consider the proposal and adopt a final strategic plan.

12 With respect to the financial and operating aspects of the review, the following  
13 steps will be taken:

- 14 1. Form a transition team including management designees and select Board  
15 members;
- 16 2. Collect data and other information relevant to a comprehensive assessment  
17 of utility performance from sources internal and external to PGE;
- 18 3. Analyze data and other information, including organizational, financial,  
19 and operational performance metrics and comparisons with relevant  
20 benchmarks;
- 21 4. Identify prospective opportunities for efficiency and productivity gains  
22 (including potential cost savings and service quality enhancements);
- 23 5. Identify and assess benefits and risks of prospective opportunities,  
24 including service quality, reliability and capital implications;
- 25

- 1           6. Formulate an action plan incorporating specific action items and  
2           timeframes to achieve efficiency and productivity gains (including  
3           potential cost savings and service quality enhancements), and integrate  
4           into strategic plan; and  
5           7. Submit action plan to Board of Directors for approval.

6   **Q. Can you give us more detail on what types of matters Oregon Electric expects this**  
7   **review to address?**

8   **A.** Yes. Long-term resource planning will be a key focus of the new PGE Board because  
9   resource decisions have such a significant impact on a utility's customers and owners.  
10   Oregon Electric supports the Action Plan PGE has developed through its 2002 IRP.  
11   Working from that base, the new PGE Board will guide PGE in its next resource  
12   planning process to identify, in collaboration with stakeholders, resource actions to  
13   meet its customers' evolving needs. We will also include an assessment of PGE's  
14   stance on regional transmission and BPA issues, in conjunction with resource planning.  
15   In considering revisions to the company's strategic plan, the new PGE Board also will  
16   consider the following:

- 17       • Further enhancement of PGE's culture to:
    - 18           ○ heighten awareness of customer concerns and needs;
    - 19           ○ heighten awareness of opportunities that aid sustainability, greater use of  
20           renewable generation resources, energy efficiency, and environmental  
21           sensitivity;
    - 22           ○ further emphasize the need to increase efficiency and productivity while  
23           ensuring service quality and reliability standards are met.
- 24  
25

- 1           • Regulatory direction:
- 2                 ○ consider emerging standards and trends;
- 3                 ○ explore ways to further enhance effectiveness of PGE's relationships
- 4                         with regulators and constituents.

5           With respect to the financial and operational review, at a more detailed level the review

6           will include:

- 7           • Financial performance assessment:
- 8                 ○ evaluate budgeting practices:
- 9                         • annual budget process and methodology;
- 10                         • monitoring tools and procedures.
- 11                 ○ evaluate risk management practices:
- 12                         • current program, processes, and reporting;
- 13                         • delegation of authority practices, procedures for actions, and
- 14                                 communications when trading limits are approached;
- 15                         • asset optimization strategy.
- 16           • Operational performance assessment:
- 17                 ○ cost and service level assessment across operations and corporate
- 18                         services functions;
- 19                 ○ practices and processes assessments of PGE versus other utilities.
- 20           • Performance improvement:
- 21                 ○ combine quantitative and best practices criteria, along with examination
- 22                         of implications for service quality, reliability and capital, to develop
- 23                         compelling business cases for process and practice improvements;
- 24                 ○ use of proven process improvement methodologies;
- 25                 ○ training and skills development to enhance cultural change.

- Performance monitoring and reporting systems:
  - executive information systems and development of key performance indicators;
  - scorecards for ongoing performance tracking;
  - link assets, processes, and management teams;
  - focus on accountabilities and commitments.

### III. BENEFITS OF THE TRANSACTION

**Q. Is Oregon Electric able to provide more detail regarding the benefits of the Proposed Transaction?**

**A.** Yes. As a result of our discussions with various parties, the public meetings, and the workshop in this proceeding, Oregon Electric is able to more particularly set out certain commitments that will augment the benefits of the Proposed Transaction articulated in our initial filing. Specifically, I will address (a) providing customers with an opportunity for a rate credit, (b) adoption of service quality measures, (c) periodic access to the PGE Board for certain advocacy groups, (d) use of renewable resources for power supply, and (e) assistance to low income customers. I will also discuss the benefit of local representation and leadership.

Oregon Electric acknowledges that there is more work to do before we can define the exact parameters of some of the commitments. Accordingly, we pledge to continue to work with Staff and the other parties in this proceeding to further define these commitments.

*RATE CREDIT*

1  
2 **Q. Is Oregon Electric willing to offer as a benefit a structure that could result in a**  
3 **rate credit for customers?**

4 A. Yes. Oregon Electric is willing to formulate a structure under which PGE would share  
5 with customers some portion of the profits from the regulated business in excess of an  
6 actual return on equity of 10.5%. Oregon Electric is willing to continue this  
7 commitment for five years. The methodology is to be agreed upon in the course of this  
8 proceeding.<sup>2</sup>

9 **Q. Explain how this would work.**

10 A. Basically, for each annual period, PGE would determine its actual return on equity from  
11 the regulated business based on an agreed-upon methodology. If that return on equity  
12 exceeds 10.5%, the customers would receive a portion of the profits in excess of 10.5%  
13 through a rate credit.

14 **Q. Why is this a benefit to customers?**

15 A. Ordinarily, a utility is not required to share with customers any portion of its earnings  
16 from that year in excess of its actual return on equity. The profits in excess of the return  
17 on equity accrue solely to the benefit of shareholders until the next general rate case.  
18 Of course, in years when the company underearns, shareholders bear that burden. Our  
19 proposal is to share with PGE's customers a portion of incremental earnings from the  
20 regulated business above an actual return on equity of 10.5%. The benefit of this  
21 proposal is a structure that provides an opportunity for customers to realize a rate credit.

22 **Q. Why aren't you simply offering a fixed rate credit?**

23 A. In prior proposed mergers involving PGE, the proposed buyers were other energy  
24 companies, which meant there would be merger "synergies" resulting in cost savings

25 <sup>2</sup> Among the details of this methodology will be the need to accommodate the asymmetric impact of hydro variability.

1 and benefits to the applicants. These synergies formed the basis for settlements that  
2 featured fixed rate credits. By comparison, this is an acquisition by a non-energy  
3 related company with no other business. It is not a merger. Oregon Electric has no  
4 other holdings and there will be no synergies available to share with customers.

5 On the other hand, Oregon Electric committed to investing in PGE because it  
6 believes that PGE's earnings will grow as the Oregon economy improves, as certain and  
7 stable ownership returns to the company, and as the new ownership and reinvigorated  
8 Board leadership assist the company in becoming more efficient, productive and  
9 effective. If our expectations prove correct, Oregon Electric is willing to have  
10 customers share in earnings improvement from the regulated business in excess of an  
11 actual 10.5% return on equity.

12 *CUSTOMER SERVICE*

13 **Q. Will Oregon Electric commit to a 10-year extension of the service quality measures**  
14 **agreed to by Enron in UM 814, as modified?**

15 **A.** Yes. We understand that these service quality measures have benefited customers, and  
16 that Staff and various parties would like to have them continued. Oregon Electric  
17 supports Commission oversight and enforcement of measures designed to ensure that  
18 PGE's customers receive high-quality service. Section IV of this testimony sets out this  
19 commitment. Oregon Electric is willing to commit that PGE will adopt these service  
20 quality measures and extend them for a period of 10 years.

21 *CUSTOMER CONCERNS*

22 **Q. Is Oregon Electric willing to make a commitment regarding access to the PGE**  
23 **Board for advocacy groups?**

24 **A.** We understand the current PGE team is in frequent contact with the various customer  
25 advocacy groups. Oregon Electric believes that giving these groups access to the PGE

1 Board of Directors would enhance the company's ability to consider customer views,  
2 particularly with regard to strategic issues, such as resource planning, and other  
3 significant issues. Accordingly, Oregon Electric is willing to commit that PGE will  
4 provide periodic access to the PGE Board for the appropriate advocacy groups.

5 *RENEWABLES*

6 **Q. What is Oregon Electric's position on PGE entering into a major long-term wind**  
7 **power purchase arrangement to meet a portion of its resource requirements under**  
8 **the proposed IRP?**

9 A. Oregon Electric supports PGE's acquisition of long-term wind power as part of its  
10 execution of PGE's IRP Action Plan, consistent with PGE's obligation to acquire power  
11 at competitive prices. Oregon Electric has communicated this view to PGE.

12 **Q. Is Oregon Electric willing to commit to a unified approach by PGE to dealing with**  
13 **advocacy groups concerned with renewable resources, sustainability, energy**  
14 **efficiency, and environmental matters?**

15 A. Yes. These groups have expressed the view that a more coordinated approach within  
16 PGE to ensure follow-through on issues of concern to the various advocacy groups for  
17 renewable resources, sustainability, energy efficiency, and environmental matters would  
18 be beneficial to them, the company, and customers. We agree. Accordingly, Oregon  
19 Electric is willing to commit that PGE will appoint a manager with appropriate  
20 authority and responsibility to work with these advocacy groups.

21 **Q. Is Oregon Electric willing to make any other commitments regarding renewable**  
22 **resources, sustainability, energy efficiency, and environmental matters?**

23 A. Yes. We also understand it would be helpful, on matters of renewable resources,  
24 sustainability, energy efficiency, and environmental matters, for certain advocacy  
25 groups to have some degree of access to the PGE Board of Directors. Board access

1 would provide an opportunity for these groups to convey their views on long-term  
2 strategies, as well as to address specific concerns that may not have been adequately  
3 addressed by management. We agree. Accordingly, Oregon Electric is willing to  
4 commit that PGE will provide periodic access to the PGE Board for these advocacy  
5 groups.

6 **Q. Anything else?**

7 A. Yes. We understand that advocates for use of renewable sources of energy have set a  
8 goal to substantially increase the renewable sources of generation in the Northwest and  
9 Oregon by 2012. Oregon Electric believes portfolio diversity (as well as a percentage  
10 reduction of reliance on fossil fuel generation resources) benefits customers and the  
11 public if renewable energy is economically competitive, taking all relevant  
12 circumstances into consideration. Oregon Electric is willing to commit to have PGE  
13 vigorously pursue a target of 10% of 1:2 peak capacity for load, whether contracted or  
14 owned, from renewable resources by 2012, provided it can be accomplished  
15 economically.

16 Oregon Electric understands there are obstacles to reaching this goal which  
17 require a variety of creative solutions. Accordingly, in conjunction with this  
18 commitment, Oregon Electric is willing to commit that PGE will actively work with  
19 stakeholders toward resolving the transmission, system integration, and other issues  
20 posed by wind and other renewable generation.

21 *LOW INCOME ASSISTANCE*

22 **Q. Does Oregon Electric have a more specific proposal regarding low income  
23 customer assistance?**

24 A. Yes. PGE currently donates approximately \$100,000 a year in cash and in-kind  
25 contributions to Oregon HEAT—an agency dedicated to helping low income utility

1 customers. Oregon Electric is willing to commit to have PGE double its annual cash  
2 donation for 10 years. This will be paid from shareholder, not customer, funds.

3 We also have been informed by advocates for the low income customers that  
4 there is not enough money available for emergency bill-paying assistance, despite the  
5 \$10 million collected each year by PGE from customers through PGE's Oregon Energy  
6 Assistance Program. Additionally, aside from weatherization assistance provided under  
7 the SB 1149 public purpose charge, there are no programs designed to provide  
8 assistance for those customers whose life circumstances are such that they are  
9 chronically in need of help with their utility bills. I understand that under SB 1149,  
10 PGE and the Commission can consider various options that would provide some relief  
11 to those customers who are chronically in need. Oregon Electric proposes to have PGE  
12 lead a work group to explore with stakeholders the options for helping those in chronic  
13 need and the impacts of the various alternatives.

14 *LOCAL REPRESENTATION AND LEADERSHIP*

15 **Q. Please describe in more detail the benefits associated with local representation and  
16 leadership on the PGE board.**

17 **A.** The local representation and leadership promised by the Proposed Transaction will be a  
18 significant benefit to PGE's customers and the public interest. Oregon Electric has  
19 committed that the PGE Board will have at least five Oregonians as members at all  
20 times. Included in this commitment is the assurance that the Chair will be an  
21 Oregonian. This commitment is designed to ensure sensitivity and accountability to  
22 local concerns at the PGE Board level.

23 First, the Oregonians on the Board will have a first-hand understanding of the  
24 unique position PGE has in this community and the issues facing PGE's industrial,  
25 commercial, and residential customers.

1           Second, the Oregonians on the Board will be accountable to their neighbors and  
2 business partners for the actions of PGE. This will be an informal accountability, but  
3 there can be little doubt it will cause them to consider local concerns.

4           Third, the Oregonians on the Board will be accessible. As members of the  
5 community, their presence will give customers and the public an opportunity to express  
6 views and concerns. This accessibility will be informal, but it will be important to  
7 Oregonians nonetheless.

8           Fourth, the local influence on the Board will be greatly enhanced through the  
9 role of the Chair. In addition to presiding over formal Board proceedings, a Chair is  
10 implicitly responsible for ensuring that all views are considered and for guiding the  
11 Board toward effective action. By committing that the Chair be an Oregonian, Oregon  
12 Electric is further enhancing the Board's consideration of local concerns.

13 **Q. Who else will sit on the Board?**

14 A. In addition to the representatives of TPG Applicants and the Oregonians (including  
15 PGE's CEO Peggy Fowler), Oregon Electric will appoint additional independent  
16 directors who are national business leaders with energy industry and other relevant  
17 areas of expertise. These appointees will bring their individual strengths and  
18 perspectives to the Board. Oregon Electric believes that this diverse and experienced  
19 Board of Directors will provide PGE with the critical direction and focus that it needs to  
20 thrive.

21 **Q. What will be the role of the PGE Board?**

22 A. The PGE Board will be vested with the full right and discretion to oversee and direct the  
23 affairs of PGE. The Board will function in every respect as a board would normally  
24 function: it will meet regularly; receive, review and consider management reports and  
25 recommendations; establish Board committees to oversee matters such as accounting

1 practices; offer guidance and direction to management on important issues; formulate  
2 strategic plans; address long-term resource planning; and cultivate a corporate culture  
3 sensitive to customer concerns (such as rates, regional economic growth, and  
4 environmentally friendly practices and plans).

5 **Q. Please explain how the consent rights held by the TPG Applicants will impact the**  
6 **Board's functions.**

7 A. The PGE Board is the only body that can take affirmative action in governing PGE,  
8 with or without the consent rights. The consent rights simply require that if certain  
9 actions are approved by the Board, TPG Applicants must consent before the action may  
10 be taken. To be clear, the consent rights will not give TPG Applicants the ability to  
11 unilaterally initiate any actions with respect to PGE.<sup>3</sup> For example, TPG Applicants  
12 will have no authority to require a rate increase or initiate a rate case, or to cause PGE  
13 to sign any contracts or make specific investments in resources. Under all  
14 circumstances, the PGE Board will remain the only PGE governing body that may pass  
15 and implement resolutions.

16 In the event that the Board makes a decision that requires the consent of TPG  
17 Applicants, the decision would be submitted to the Board of Oregon Electric and then to  
18 TPG Applicants. If it is a decision on which the appointees of TPG Applicants voted in  
19 favor, it would be a mere formality to obtain TPG Applicants' consent. If the  
20 appointees of TPG Applicants did not vote in favor of the decision, TPG Applicants  
21 would have to consider whether to consent or to withhold consent. I would expect that  
22 TPG Applicants would give serious consideration to the matter, and I would be one of  
23 the individuals participating in that discussion. That said, if the consent is not given, the  
24 Board resolution would not be implemented. It is important to remember, however, that

25 <sup>3</sup> The TPG Applicants will have a standard majority shareholder right in a private or public company to sell its shares and thereby transfer control of the company, subject to Commission regulatory oversight.

1 TPG Applicants could not force the Board to act in accordance with their wishes.  
2 Rather, either no action would be taken at that time on the matter at hand, or a  
3 compromise would be reached.

4 TPG Applicants understand that local representation and leadership will be a  
5 valuable element of PGE's future success. We intend to give the views and  
6 perspectives of all members of PGE's Board their fullest consideration in these  
7 situations. On balance, although Oregon Electric's commitment to ensure local  
8 representation and leadership on the PGE Board does not give the local members the  
9 unilateral ability to control the PGE Board, it does give them a powerful role in PGE's  
10 governance.

11 **Q. Is Oregon Electric's commitment a typical commitment?**

12 A. No. The members of the board of directors of privately owned companies are usually  
13 "insiders" employed by or otherwise connected to the owners. PGE's Board under  
14 Enron ownership, for example, is made up entirely of PGE management and Enron  
15 insiders all but one of whom are from out-of-state. Even at publicly held companies  
16 (where board membership is typically determined by nominations from a board  
17 governance committee and a shareholder vote), there is no assurance of local  
18 representation or leadership. By contrast, Oregon Electric is committed to maintaining  
19 a PGE Board of Directors that has a substantial independent contingent of directors, as  
20 well as a substantial contingent of Oregonian directors.

21 **Q. Has Neil Goldschmidt withdrawn his participation in this proceeding?**

22 A. Yes. Mr. Goldschmidt will not have any role at Managing Member LLC or at Oregon  
23 Electric, and will not serve on PGE's Board of Directors.  
24  
25

1 **Q. How will Mr. Goldschmidt's withdrawal affect Oregon Electric's plan for the**  
2 **future of PGE?**

3 A. Oregon Electric is confident in the strength of its proposal. It does not expect that the  
4 Proposed Transaction, the Application, or PGE will be adversely affected by  
5 Mr. Goldschmidt's absence. Oregon Electric's commitment is to the future of PGE and  
6 its customers. We anticipate that the Board of Directors of PGE will change over time,  
7 as boards do. What will not change is the commitment that Oregon Electric is making  
8 to enhance the PGE Board and to provide strong local representation and local  
9 leadership over the period of its stewardship.

10 **Q. Has Oregon Electric chosen a new Chair for the PGE Board?**

11 A. No. Oregon Electric is working actively, but deliberately, to identify a new Chair for  
12 PGE's Board. Oregon Electric is confident that it will appoint a candidate with the  
13 talent, experience, and skills to successfully lead the Board of PGE.

14 **Q. How can stakeholders evaluate this commitment regarding Board composition**  
15 **without knowing who all of the directors are?**

16 A. Oregon Electric's commitment to having at least five Oregonians (including an Oregon  
17 Chair) and a large contingent of highly qualified independent directors is what  
18 distinguishes its proposal. Individual Board directors will change from time to time, but  
19 these commitments will not. These commitments ensure balanced professional Board  
20 consideration of business issues and objectives with a high level of sensitivity and  
21 accountability to local concerns. With a fiduciary responsibility to manage money on  
22 behalf of the many investors in TPG Applicants' funds, and with the substantial  
23 personal investment being made by Gerald Grinstein and Tom Walsh in Managing  
24 Member, the Board of Oregon Electric has every incentive to select highly qualified  
25 individuals as Board members.

1 **IV. CONDITIONS OF APPROVAL FOR THE PROPOSED TRANSACTION**

2 **Q. Will Oregon Electric agree to any conditions for approval by the Commission?**

3 **A. Yes.**

4 **Q. Which ones?**

5 **A. First, Oregon Electric is willing to agree to three conditions that supplement the**  
6 **Commission's statutes and rules with respect to access to information and review of**  
7 **intercorporate transactions that result in direct charges or cost allocations:**

- 8 1. The Commission or its agents may audit the accounts of Oregon  
9 Electric and any subsidiaries that are the bases for charges to PGE to  
10 determine the reasonableness of allocation factors used by Oregon  
11 Electric to assign costs to PGE and amounts subject to allocation or  
12 direct charges. Oregon Electric agrees to cooperate fully with such  
13 Commission audits.
- 14 2. Oregon Electric and PGE shall provide the Commission access to all  
15 books of account, as well as all documents, data and records of their  
16 affiliated interests, which pertain to transactions between PGE and  
17 all its affiliated interests.
- 18 3. PGE and Oregon Electric shall maintain separate books and records.  
19 All PGE financial books and records shall be kept in Portland,  
20 Oregon.
- 21 4. Oregon Electric shall not subsidize its activities by allocating to or  
22 directly charging PGE expenses not authorized by the Commission  
23 to be so allocated or directly charged.

24 **Second, Oregon Electric is willing to agree to the condition that directly**  
25 **prohibits PGE from bearing any of the acquisition premium or transaction costs:**

1. Oregon Electric and PGE shall exclude all costs of the acquisition  
(transaction costs) from PGE's utility accounts. Within ninety days  
following the completion of the transaction, Oregon Electric will  
provide a preliminary accounting of these costs. Oregon Electric  
agrees to provide the Commission a final accounting of these costs  
within thirty days following the completion of the final accounting  
related to the transaction.

1 Third, Oregon Electric is willing to agree to conditions that serve to enhance the  
2 Commission's ability to ensure Oregon Electric does not weaken PGE's financial  
3 condition.

- 4 6. PGE shall maintain separate debt and, if more than \$5 million is  
5 outstanding, preferred stock ratings.
- 6 7. PGE shall not make any distribution to Oregon Electric that will  
7 reduce PGE's equity capital below 48 percent of the total PGE  
8 capital without Commission approval. PGE's total capital is defined  
9 as common equity, preferred equity, and long-term debt. Long-term  
10 debt is defined as debt with a duration of more than one year. The  
11 Commission Staff and PGE may re-examine this minimum common  
12 equity percentage as financial conditions change and may request  
13 that it be adjusted.
- 14 8. The allowed return on common equity and other costs of capital will  
15 not rise as a direct result of the acquisition. These capital costs refer  
16 to the costs of capital used for purposes of rate setting, avoided cost  
17 calculations, affiliated interest transactions, least cost planning, and  
18 other regulatory purposes.
- 19 9. Oregon Electric and PGE shall provide the Commission unrestricted  
20 access to all written information provided to common stock, bond,  
21 or bond rating analysts, which directly or indirectly pertain to PGE.  
22 Such information includes, but is not limited to, reports provided  
23 and presentations made to common stock analysts and bond rating  
24 analysts. For purposes of this condition, "written" information  
25 includes, but is not limited to, any written and printed material,  
audio and video tapes, computer disks, and electronically-stored  
information. Nothing in this condition shall be deemed to be a  
waiver of Oregon Electric's or PGE's right to seek protection of the  
information.
10. Unless such a disclosure is unlawful, Oregon Electric shall notify  
the Commission of:
- a. Its intention to transfer more than 5 percent of  
PGE's retained earnings to Oregon Electric over a six month period,  
at least sixty days before such a transfer begins.
  - b. Its intention to declare a special cash dividend from  
PGE, at least thirty days before declaring each such dividend.
  - c. Its most recent quarterly common stock cash  
dividend payment from PGE within thirty days after declaring each  
such dividend.

1 Fourth, Oregon Electric is willing to agree to a condition common to mergers  
2 and acquisitions:

- 3 11. Oregon Electric guarantees that the customers of PGE shall be held  
4 harmless if the acquisition of PGE directly results in a higher  
5 revenue requirement.

6 Fifth, Oregon Electric is willing to agree to a condition to ensure a continued  
7 PGE commitment to safety and reliability:

- 8 12. Subsequent to its purchase by Oregon Electric, PGE shall continue  
9 to perform under the Service Quality Measures (SQM) as set forth in  
10 "Stipulations for PGE Service Quality Measures UM 814/UM 967,"  
11 dated March 15, 2000, for a period of ten years following approval.

12 Finally, Oregon Electric is willing to agree to a condition to facilitate the  
13 Commission's enforcement of Oregon Electric's and PGE's compliance with Oregon  
14 Electric's commitments and conditions. The exact terms of such a condition would be  
15 agreed to after all commitments and conditions have been identified consistent with the  
16 following:

- 17 13. If the Commission believes that Oregon Electric and/or PGE have  
18 violated any of the conditions set forth herein, any conditions  
19 contained in other stipulations signed by Oregon Electric and PGE,  
20 or any conditions imposed by the Commission in its final order  
21 approving the Application (collectively, the "Conditions"), then the  
22 Commission shall give Oregon Electric and PGE written notice of  
23 the violation.

24 a. If the violation is for failure to file any notice or  
25 report required by the Conditions, and if Oregon Electric and/or  
PGE provide the notice or report to the Commission within ten  
business days of the receipt of the written notice, then the  
Commission shall take no action. Oregon Electric or PGE may  
request, for cause, permission for extension of the ten-day period.  
For any other violation of the Conditions, the Commission must give  
Oregon Electric and PGE written notice of the violation. If such  
failure is corrected within five business days of the written notice,  
then the Commission shall take no action. Oregon Electric or PGE  
may request, for cause, permission for extension of the five-day  
period.

1                   b.     If Oregon Electric and/or PGE fail to file a notice or  
2     written report within the time permitted in subparagraph a. above, or  
3     if Oregon Electric and/or PGE fail to cure, within the time permitted  
4     above, a violation that does not relate to the filing of a notice or  
5     report, then the Commission may open an investigation to determine  
6     the number and seriousness of the violations. If the Commission  
7     determines that Oregon Electric and/or PGE violated one or more of  
8     the Conditions, then the Commission shall state the level of penalty  
9     it will seek under ORS 756.990 in an action filed in circuit court. If  
10    the Commission issues an order that recommends an ORS 756.990  
11    penalty against Oregon Electric and/or PGE, then Oregon Electric  
12    and/or PGE may appeal such an order under ORS 756.580. If the  
13    Commission's order is upheld on appeal, then the Commission may  
14    file a complaint in circuit court seeking penalties under  
15    ORS 756.990, and Oregon Electric and/or PGE shall file a  
16    responsive pleading agreeing to pay the penalties. The Commission  
17    shall seek a penalty on only one of Oregon Electric or PGE for the  
18    same violation.

19                   **V.     NET BENEFIT DETERMINATION**

20    **Q.     On what basis should "net benefit" be determined in this case?**

21    **A.     The Proposed Transaction should be evaluated on its own merits by determining the**  
22    **risks and benefits inherent in the proposal. If the benefits outweigh the risks and the**  
23    **public will not be harmed, our proposal should be approved.**

24    **Q.     Does the Proposed Transaction result in a net benefit when evaluated on its own**  
25    **merits?**

26    **A.     Yes. The Proposed Transaction would result in significant benefits to PGE's customers**  
27    **and to the public interest:**

- 28           •     An immediate end to Enron's ownership of PGE, ensuring stability and strong  
29           shareholder support.
- 30           •     PGE's headquarters will stay in Portland, jobs will stay in Oregon and the  
31           Company will continue its charitable leadership in the community.
- 32           •     Strong local representation and leadership on PGE's Board of Directors,  
33           ensuring accountability to customers and sensitivity to community concerns.

- 1 • A first-class Board of Directors, ensuring that PGE management has the best  
2 advice on how to navigate the challenges ahead.
- 3 • Reinvigorated Board-level strategic direction, ensuring PGE's long-term  
4 health.
- 5 • Capital reinvestment in PGE, ensuring reliability and efficiency from existing  
6 assets and the acquisition and development of new resources.
- 7 • A commitment to reinforcing high-quality service while instilling financial  
8 discipline to ensure that customers receive safe, reliable and efficient electric  
9 service.
- 10 • Oregon Electric will be an Oregon taxpayer.
- 11 • Opportunity for customers to share some portion of profits from PGE's  
12 regulated business in excess of an actual return on equity of 10.5%  
13 (methodology to be agreed upon).
- 14 • 10-year extension of the commitment to service quality measures.
- 15 • Appointment of a manager within PGE with appropriate responsibility and  
16 authority to work with the advocacy groups for renewable energy sources,  
17 sustainability, energy efficiency, and environmental matters.
- 18 • Vigorous efforts to pursue a target of 10% of 1:2 peak capacity for load,  
19 whether contracted or owned, from renewable resources, by 2012, if  
20 economical.
- 21 • 10-year extension of PGE's cash and in-kind donations to Oregon HEAT and  
22 a doubling of the cash portion of the donation.
- 23 • Periodic access to PGE's Board of Directors for various customer and  
24 environmental advocacy groups.
- 25

- Commitment to work on additional programs for low income assistance through a work group led by PGE.

**Q. Even though you maintain that the Proposed Transaction should be evaluated on its own merits, is there any comparison that can be made to determine net benefit?**

**A.** If an explicit comparison between the Proposed Transaction and something else is deemed to be required, the *status quo* – PGE’s current circumstances under Enron ownership – is the only alternative that has a sufficient factual basis for comparison. Comparison with the *status quo* is different from comparison with a hypothetical alternative because the details of the *status quo* are known, and the risks and benefits can readily be determined.

If the Commission were to perform a comparison with the *status quo*, it would start with an analysis of the risks and benefits of PGE’s current situation as an asset in the Enron bankruptcy estate. The Commission would then identify any additional risks posed by the Proposed Transaction, over and above those to which PGE is currently subject. Likewise the Commission would identify the benefits offered by the Proposed Transaction that are not offered by the *status quo*. Should the Commission find that the benefits of the Proposed Transaction outweigh the risks compared to the *status quo*, the Commission should approve the Application.

**Q. Does the Proposed Transaction result in a net benefit when compared with the *status quo*?**

Yes. The position of PGE’s customers and the public interest will be vastly improved by the Proposed Transaction versus continued Enron ownership. PGE will be freed from the distractions of Enron’s ongoing bankruptcy proceedings. In addition, as described in our Application and in this testimony, Oregon Electric’s proposal promises significant benefits that are not assured under Enron ownership.

1 **Q. Is there any comparison that can be made between the Proposed Transaction and**  
2 **some future disposition of PGE in order to determine whether there is a net**  
3 **benefit?**

4 A. No. First, in the event our proposal is not approved, there is no clear outcome for  
5 PGE's future. There are only infinite *possible* scenarios. Thus the identification of any  
6 particular alternative scenario would be guesswork. But even if a certain scenario could  
7 be considered to be likely, even if not certain, the risks and benefits of the alternative  
8 scenarios would be unknown and therefore comparison would have to be made against  
9 hypothetical risks and benefits. That is, one could only speculate as to the risks and  
10 benefits that would attach to any alternative disposition. Thus, the comparison of the  
11 Proposed Transaction to some alternative disposition of PGE would be of no value.

12 For example, a benefit Oregon Electric offers is local representation and  
13 leadership on the PGE Board of Directors. It would be impossible to compare this  
14 benefit to the make-up of PGE's Board under a distribution of PGE shares to Enron  
15 creditors (a "Distribution"), because it is not known what the make-up of that Board  
16 would be. Similarly, other benefits of this transaction include the sharing of profits  
17 from PGE's regulated business in excess of an actual return on equity of 10.5%, cash  
18 payment for low income bill paying assistance, and access to the PGE Board for certain  
19 advocacy groups. We simply do not know what a Distribution or any other alternative  
20 would yield in terms of comparable benefits.

21 **Q. Is a comparison of the Proposed Transaction to a Distribution appropriate?**

22 A. No. As I said above, I do not believe that it is appropriate for the Commission to  
23 attempt to compare our Proposed Transaction with a possible but not assured future  
24 state for PGE.

1 Q. Please explain.

2 A. I do agree that the initiation of a Distribution of PGE stock to the Enron creditors is a  
3 likely event should the Proposed Transaction not be approved. However, as explained  
4 by Enron witness Robert Bingham, the process for Distribution is a multi-stage and  
5 complex process, the end result of which is by no means certain.

6 Indeed, there will be substantial uncertainty at every stage of the process. *First*,  
7 if the Plan becomes effective, a Distribution would not occur until after 30% of the  
8 general unsecured claims have been allowed. *Second*, it is not clear when a Distribution  
9 would be completed. Enron's bankruptcy estate has objected to more than \$600 billion  
10 of the \$900 billion in claims; the estimation and litigation of disputed claims will likely  
11 take a number of years. It is not possible to reliably estimate how long final  
12 distributions would take in the most complex bankruptcy in U.S. history. However, it  
13 should be noted that it has not been uncommon for distributions in far less complex  
14 cases to take longer than a decade to complete. *Third*, for much of this long limbo  
15 period, Enron and its creditors would remain in control of PGE for part of the period,  
16 and thereafter the DCR Overseers (defined in Bingham Testimony) would exercise  
17 control. There is no way of knowing the identity of those who Enron would appoint as  
18 DCR Overseers, or of those who the DCR Overseers might appoint to the PGE Board.  
19 *Finally*, even though a Distribution might be commenced, its end result would be  
20 unknown. In particular, there would be no assurance that the end result would be a  
21 publicly held company. As explained in Mr. Bingham's testimony, either the Trustee  
22 (if the shares were in Trust) or the DCR Overseers (once 30% of the shares had been  
23 distributed) would have the authority to sell the shares in their control at any time.<sup>4</sup>

24  
25  

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<sup>4</sup> Any person or entity seeking to purchase a controlling interest in PGE or an interest granting it the ability to influence PGE would be required to seek Commission approval.



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Initial Review Process Plan

Oregon Electric Utility Company  
Portland General Electric

# Business Review Process Plan

## Areas of Focus

### Strategy

- Establish a clear view of PGE's current capabilities and potential opportunities for improvement, particularly with respect to resource optimization and planning
- Establish a plan to enhance PGE's approach to addressing customer and community needs and concerns
- Establish a clear understanding of PGE's regulatory affairs strategy and relations and potential opportunities for improvement

### Financial Planning

- Ensure that PGE has established appropriate financial plans and goals, which meet / exceed customer service and reliability requirements while achieving budget forecasts
- Evaluate PGE's current Risk Management Program and processes for prudence and potential enhancements

### Team and Business Processes

- Conduct benchmarking of PGE's current operations with like utilities
- Review and refine a set of key performance indicators (KPIs) focused on customer service, reliability, targeted operating efficiencies, profitability, and stakeholder goals
- Establish a process improvement program to improve efficiency and increase customer effectiveness/responsiveness
- Review and refine PGE's management performance review program and compensation structures to ensure alignment with KPIs

### Communication

- Ensure that every employee understands the vision, mission, values and strategy that PGE will pursue in order to be a more successful company
- Further enhance customer and key stakeholder relations and develop appropriate communications programs

# Business Review Process Plan

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## Strategy

### Activities and Milestones (1 of 4)

Objective	Actions		
	60 days	120 days	180 days
Establish a clear view of PGE's current capabilities and potential opportunities for improvement, particularly with respect to short-, medium- and long-term resource optimization and planning	<ul style="list-style-type: none"> <li>Perform initial review of current business unit strategies and results to date</li> <li>Conduct in-depth review of short-, medium- and long-term resource plans, scenarios and options</li> <li>Evaluate the company's position on related transmission issues</li> </ul>	<ul style="list-style-type: none"> <li>Conduct in-depth strategic reviews with each business unit</li> </ul>	<ul style="list-style-type: none"> <li>Produce revised strategic planning document identifying opportunities for improvement</li> <li>Refine ongoing strategic planning process as appropriate</li> <li>Assign responsibility and accountability for specific strategic initiatives</li> </ul>
Establish a plan to enhance PGE's approach to addressing customer and community needs and concerns	<ul style="list-style-type: none"> <li>Perform review of corporate culture and processes with respect to customer and community relations, current levels of satisfaction and communication plans</li> </ul>		<ul style="list-style-type: none"> <li>Integrate plan for improved customer and community relations and communication plans into revised strategic plan</li> <li>Assign responsibility and accountability for specific action items</li> </ul>
Establish a clear understanding of PGE's regulatory affairs strategy and relations and potential opportunities for improvement	<ul style="list-style-type: none"> <li>Perform review of regulatory affairs strategy, processes and communications</li> <li>Evaluate regulatory standards and trends</li> </ul>		<ul style="list-style-type: none"> <li>Integrate plan for improved regulatory affairs strategy and relations into revised strategic plan</li> <li>Assign responsibility and accountability for specific action items</li> </ul>

# Business Review Process Plan

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## Activities and Milestones (2 of 4)

### Financial Planning

Objective	Actions		
	60 days	120 days	180 days
<p>Ensure that PGE has established appropriate financial plans and goals which meet / exceed customer service and reliability requirements while achieving approved budget forecasts</p>	<ul style="list-style-type: none"> <li>Review current budgeting processes and methodologies</li> <li>Establish Delegation of Authority (DOA) guidelines and trigger points for 2005 contingency actions and communications</li> <li>Review 2005 budget (actual vs. forecast)</li> </ul>	<ul style="list-style-type: none"> <li>Develop any potential refinements to budgeting process</li> <li>Launch DOA monitoring and reporting processes</li> <li>Complete budget review</li> </ul>	<ul style="list-style-type: none"> <li>Establish appropriate monitoring tools to track financial performance</li> <li>Evaluate revenue and cost trends and initiate action plans as appropriate</li> </ul>
<p>Evaluate PGE's current Risk Management Program and processes for prudence and potential enhancements. Focus will be on:                      Asset Optimization                      Trading/Marketing                      Fuel Management</p>	<ul style="list-style-type: none"> <li>Review current program, processes and reporting for risk management</li> <li>Establish DOA guidelines and trigger points for communications and actions when limits are approached</li> <li>Review asset optimization strategy for short-, medium- and long-term resource planning</li> </ul>	<ul style="list-style-type: none"> <li>Complete risk management review and any required refinements</li> <li>Launch DOA monitoring and reporting processes</li> <li>Assign responsibility and accountability for specific performance metrics</li> </ul>	<ul style="list-style-type: none"> <li>Continue monitoring risk management reports and processes</li> </ul>

# Business Review Process Plan

## Activities and Milestones (3 of 4)

### Team and Business Processes

Objective	Actions		
	60 days	120 days	180 days
Conduct benchmarking of PGE's current operations with U.S. utilities of like size, geography and customer mix	<ul style="list-style-type: none"> <li>Identify utilities and other industry participants to conduct detailed process review</li> <li>Identify key performance metrics for each business unit to benchmark against</li> </ul>	<ul style="list-style-type: none"> <li>Review initial benchmarking reports and analysis</li> </ul>	<ul style="list-style-type: none"> <li>Develop action plans based on benchmarking analysis to identify potential opportunities for improvement, and to facilitate continuous monitoring and reporting on progress improvements</li> </ul>
Review and refine a set of KPIs focused on customer service, reliability, targeted operating efficiencies, profitability, and stakeholder goals	<ul style="list-style-type: none"> <li>Evaluate current KPIs that are in place</li> <li>Develop additional or refined KPIs and reporting requirements</li> </ul>	<ul style="list-style-type: none"> <li>Establish content, process and format for tracking of KPIs and regular performance reviews</li> </ul>	<ul style="list-style-type: none"> <li>Complete refinement of KPIs for alignment with strategic plan</li> </ul>
Establish a process improvement program to improve efficiency and increase customer effectiveness/responsiveness	<ul style="list-style-type: none"> <li>Identify potential process improvements</li> <li>Assign teams to evaluate potential process improvements</li> </ul>	<ul style="list-style-type: none"> <li>Initiate process improvements, integrating results of benchmarking analysis</li> <li>Integrate process improvement plans into KPI monitoring</li> </ul>	<ul style="list-style-type: none"> <li>Monitor improvements and adjust action plans, as necessary</li> </ul>
Review PGE's current annual Management Performance Review Program and compensation structure to ensure alignment with KPI development	<ul style="list-style-type: none"> <li>Evaluate current management review processes and compensation structures</li> </ul>	<ul style="list-style-type: none"> <li>Review benchmark analysis for responsibility, grade level and compensation structure for key management positions</li> </ul>	<ul style="list-style-type: none"> <li>Provide staffing and compensation recommendations for alignment with KPIs and strategic plan</li> </ul>

# Business Review Process Plan

## Communication

### Activities and Milestones (4 of 4)

		Actions		
Objective	60 days	120 days	180 days	
Ensure that every employee understands the vision, mission, values and strategy that PGE will pursue in order to be a more successful company	<ul style="list-style-type: none"> <li>Participate in leadership meetings, conference calls and video messages to provide initial introduction and observations</li> </ul>	<ul style="list-style-type: none"> <li>Conduct leadership meetings, internal "town hall" meetings, and internal communications to lay out vision, mission, values and strategy</li> <li>Assign responsibility and accountability for specific performance metrics</li> <li>Initiate site visits to major locations</li> </ul>		
Further enhance customer and key stakeholder relations and develop appropriate communications programs	<ul style="list-style-type: none"> <li>Conduct calls and meetings with key customer and community groups to solicit input and feedback</li> </ul>	<ul style="list-style-type: none"> <li>Develop key message document highlighting PGE's priorities and potential opportunities</li> <li>Develop communication strategy</li> <li>Establish PGE Customer Advisory Group</li> </ul>	<ul style="list-style-type: none"> <li>Refine communication plans based on customer and community feedback</li> <li>Provide for periodic access to the PGE Board for certain key stakeholders</li> </ul>	